

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	No. 08 CR 235
)	Honorable Judge Gottschall
MIGUEL OCON,)	
)	
Defendant.)	

**MOTION FOR A HEARING ON THE
ADMISSIBILITY OF CO-CONSPIRATORS' STATEMENTS**

Now comes the Defendant, Miguel Ocon, by and through his attorney, Rachel L. Zebio, pursuant to Rule 104(a) of the Federal Rules of Evidence respectfully moves this Honorable Court for a pre-trial hearing to determine the admissibility of any co-conspirators' statements which the government intends to introduce under the "co-conspirator's exception" to the Hearsay Rule. In the alternative, defendant moves for a pre-trial proffer of the independent evidence of the conspiracy that the government intends to introduce.

In support of this Motion defendant states as follows:

1. Defendant is charged with violating various federal criminal drug statutes, including 21 U.S.C. § 841 and § 846, the drug conspiracy statute. Defendant has reason to believe that the government intends to use some or all of the certain statements made by co-defendants.
2. Under Rule 801(d)(2)(E) of the Federal Rules of Evidence, a statement of a co-conspirator during the course of and in furtherance of a conspiracy is not hearsay if offered against a party.

3. Under the “co-conspirator’s statements” exception to the Hearsay Rule, such statements may be admissible upon a showing by the government that: (a) a conspiracy existed; (b) the statements was made during the course of, and in furtherance of the conspiracy; and (c) the declarant and the defendant were both members of the alleged conspiracy.

4. Under Rule 104 of the Federal Rules of Evidence, the trial court has the responsibility of determining the admissibility of co-conspirator’s statements out of the presence and hearing of the jury.

5. The preferred order or proof in a conspiracy case is to require the showing of a conspiracy and of the connection of the defendant with it before admitting declarations of co-conspirators.

6. Fulfillment of the conditions of admissibility of co-conspirators’ statements must be established from evidence independent of the co-conspirator’s statements themselves.

7. A pre-trial hearing on the issue of admissibility eliminates any possibility of prejudice to the defendant. The same may not be true with respect to a limiting instruction given after the statement has been presented to the jury.

Defendant respectfully requests that this Honorable Court conduct a pre-trial hearing, outside of the presence and hearing of the jury, to determine:

- (a) whether the alleged conspiracy actually exists;
- (b) whether the statements sought to be introduced were made during the course of and in furtherance of the conspiracy; and
- (c) whether the declarant and the defendant were both members of the alleged conspiracy.

In the alternative, defendant requests a proffer by the government before trial which would present independent evidence of the conspiracy sufficient to permit the admissibility at trial of any co-conspirators' statements.

Respectfully submitted,

_____/s/_____
Rachel L. Zebio

Rachel L. Zebio
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NOTICE OF FILING

**TO: AUSA Nathalina Hudson
U.S. Attorney's Office
219 S. Dearborn, 5th Floor
Chicago, IL 60604**

PLEASE TAKE NOTICE that on June 9, 2008, I filed electronically with the clerk of the United States District Court for the Northern District of Illinois, Eastern Division, the attached, **Motion for a Hearing on the Admissibility of Co-Conspirators Statements**. True and correct copies of each is attached hereto and hereby served upon you.

Respectfully Submitted,

_____/s/_____
Rachel L. Zebio

Rachel L. Zebio
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Certificate of Service

I, Rachel L. Zebio, an attorney certify that the attached copy of the document stated above was delivered, electronically, to A.U.S.A. Nathalina Hudson, 219 S. Dearborn, Suite 500, Chicago, IL 60604, and hand delivered to the Honorable Judge Gottschall, 219 S. Dearborn, Room 2356, Chicago, IL 60604 on this 9th day of June, 2008.

_____/s/_____
Rachel L. Zebio

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